

APPEAL NO. 022045  
FILED OCTOBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 3, 2002. With respect to the issues before her, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that she did not have disability because she did not sustain a compensable injury. In her appeal the claimant contends that she did not receive a fair hearing because the hearing officer and the attorney for the respondent (carrier) appeared to be personal friends before and during the hearing and because the carrier's attorney stayed in the hearing room with the hearing officer for 17 minutes after the claimant had left the room. In the alternative, the claimant essentially challenges the hearing officer's determination on sufficiency of the evidence grounds. The appeal file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). That issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the claimant was injured at work as a result of the forklift accident of \_\_\_\_\_. The hearing officer determined that the claimant did not sustain her burden of proving that she sustained a compensable injury. The hearing officer was acting within her province as the fact finder in so doing. Our review of the record does not demonstrate that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse that determination on appeal. Pool; Cain.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because the claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability.

In her appeal, the claimant makes the assertion of *ex parte* communication between the hearing officer and the carrier's attorney after the hearing. Specifically, the claimant states that after she left the hearing she waited in the doorway of her representative's office and was able to observe the hearing room. She stated that the hearing officer and the carrier's attorney stayed in the hearing room for 17 minutes and were laughing and talking. The claimant did not include any evidence that the hearing officer and the carrier's attorney discussed the merits of this case during that conversation. We will not presume that a discussion of the merits of the case occurred absent some evidence to that effect. Accordingly, we find no basis to reverse and remand for a new hearing based upon the claimant's assertion of impropriety. See Texas Workers' Compensation Commission Appeal No. 950141, decided March 15, 1995; Texas Workers' Compensation Commission Appeal No. 990349, decided April 1, 1999 (Unpublished).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL, SUITE 2900  
DALLAS, TEXAS 75201.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Veronica Lopez  
Appeals Judge

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Robert W. Potts  
Appeals Judge